

Application No. 10/509,756
Attorney Docket No. 042751
Response filed August 16, 2007

REMARKS

Claims 1-4 are pending in the application, and are rejected.

Applicants note that the Amendment filed on December 29, 2006 overcame all of the outstanding rejections. The Examiner has cited new art to make the present rejections. However, Applicants submit that the substance of the rejections does not have to be addressed, as detailed below.

Claim Rejections - 35 U.S.C. §103(a)

Claims 1-4 are rejected under 35 U.S.C. §103(a) as being unpatentable over Onuki et al. U.S. Pub. 2005/011512.

The Examiner admits that although Onuki et al. teaches the cycloalkylbenzene derivative and tert-amylbenzene as equivalent overcharge inhibitors, the reference does not expressly disclose the combination of said materials in the electrolyte. The Examiner concludes that it would have been obvious to employ a mixture of cycloalkylbenzene and tert-amylbenzene, because it is obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.

Applicants submit that the substance of the present rejections does not have to be addressed, because the cited document is subsequent to Applicants' earliest filing date.

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The present application is a national phase entry of Application No. PCT/JP03/007944, the international filing date of which being June 23, 2003. This is the effective US filing date of the present application.

U.S. Pub. 2005/011512 to Onuki et al. is a continuation of Application No. PCT/JP03/02741, filed on March 7, 2003 and published on September 18, 2003. However, because PCT/JP03/02741 was filed in a non-English language, it is not available as a reference under 35 U.S.C. §102(e). Thus, PCT/JP03/02741 would only be available as a reference under 35 U.S.C. §102(b), based on its publication date of September 18, 2003.

Applicants note that the cited U.S. Pub. 2005/011512 to Onuki et al. was filed on September 8, 2004, which is its §102(e) date, and published on June 5, 2005, which is its §102(b) date.

Because the international filing date of June 23, 2003 of the present application predates that of both the filing and publication dates of the cited reference, Applicants submit that U.S. Pub. 2005/011512 to Onuki et al. does not qualify as a prior art reference under any of §§102(a), (b), or (e). Therefore, it can not be used to further a rejection under §103(a).

Therefore, Applicants submit that that the claims are in condition for allowance. Applicants request such action at an early date.

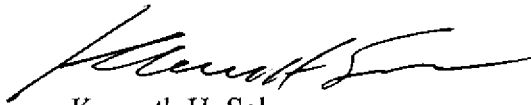
If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

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If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'Kenneth H. Salen', written in a cursive style.

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KHS/rf